

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.2911 OF 1998

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
2. To be referred to the reporters or not ?
3. Whether their lordships wish to see the fair copy of the judgment ?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
5. Whether it is to be circulated to the Civil Judge?

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M/S. JIRAWALA TRANSPORT COMPANY

VERSUS

THE STATE OF GUJARAT & ANR.

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Appearance:

MR D.K.NAKRANI for the Petitioner

MR LR PUJARI for the Respondents

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Coram: S.K. Keshote,J

Date of decision:08/05/1998

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C.A.V. JUDGMENT

Rule. Mr.L.R.Pujari waives service of Rule on behalf of respondents.

2. Heard the learned counsel for the parties. From the perusal of the Special Civil Application, I find that there are twofold grievances of the petitioner in the matter. The first grievance pertains to grant of exemption to the petitioner from payment of motor vehicle tax payable under the provisions of Motor Vehicles Act, 1958, for the period during which it is alleged by petitioner that the luxury bus bearing No.GJ-6-U-9710 remained under non-use and for directing the respondents to give the removal permission of the said vehicle. The second grievance pertains to renewal of mechanically fitness certificate of the vehicle aforesaid.

3. From the letter of the respondents dated 20th April 1998, copy of which has been submitted on the record of this case by the learned counsel for the respondents, I find that the respondents are not accepting the period of non use of the vehicle as claimed by the petitioner for the reasons stated in the letter as well as in the reply to the Special Civil Application. However, the grievance of the petitioner is that despite of submission of application for acceptance of non-use of the said vehicle, for the period alleged, any order has not been passed and the liability of the tax has been determined for the period of non-use and for non payment of tax for the said period, the respondents are justifying their action not to grant permission for removal of vehicle from the place where it is standing and for non consideration of the matter of renewal of mechanically fitness certificate of the vehicle.

4. In a matter where fitness certificate is not granted to the vehicle, that order of the authority is appealable. Similarly, in a matter of dispute regarding the tax exemption for the period claimed during which the vehicle was kept in non-use, the same is also appealable, if it is not accepted by the authorities. However, no positive order has been passed in the present case, except the communication made to the petitioner by respondents under the letter dated 20th April 1998. It is correct to say on the part of the respondents that in case the non-use of the vehicle is not accepted for the period alleged, the petitioner has to make payment of tax for the said period before his prayer for removal of vehicle from the place where at present it is standing as well as its application for renewal of mechanically fitness certificate of the vehicle are considered.

5. However, interest of justice will be served in case this Special Civil Application is disposed of in

terms that in respect to grievance made by the petitioner in this Special Civil Application, it may submit a detailed application to the respondent No.2 with all requisite documents, within a period of ten days from the date of receipt of copy of this order and on receipt of such application, the respondent No.2 shall consider the matter after hearing the petitioner or its representative, and thereafter shall pass a reasoned order. This exercise has to be completed within a period of one month from the date of receipt of application of the petitioner. In case the grievance of the petitioner as made in the application are not accepted by respondent No.2, it shall be open to the petitioner to take appropriate legal remedy available under the Motor Vehicles Act, 1958, against the order passed by respondent No.2. The Special Civil Application and Rule stand disposed of accordingly with no order as to costs.

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(sunil)